IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF FEBRUARY 1998

BEFORE

THE HON'BLE MR. JUSTICE H.L. DATTU

WRIT PETITION 1465/1997

BETWEEN :

K. Shashidhara Rao
s/o. K. Hanumanthappa,
aged about 20 years,
Student studying in Dr.
Ambedkar Institute of
Technology, Near Jnana
Bharathi Campus,
Bangalore - 560 056. ... PETITIONER

(By Sri B.G. Sridharan, Adv.)

AND :

1. Dr. Ambedkar Institute
of Technology,
Near Jnana Bharathi Campus,
Bangalore - 560 056,
by its Principal.

2. University of Bangalore
Jnana Bharathi Campus,
Bangalore - 560 056,
by its Registrar. ... RESPONDENTS

(By Sri Basavaraj Belavangala
adv. for R-1, absent and
N.K. Patil, Adv., for R-2)

This writ petition is filed under Articles 226 and 227 of the Constitution of India with a prayer to direct the respondents to announce the result of the examination taken by the petitioner for I and II semesters during the academic year 1995-96 in B.E. Degree Civil Engg. Course forthwith and etc.

This writ petition coming on for hearing this day the Court made the following:

O R D E R

A youth in his prime suffered by inhuman acts of the authorities, screams with a silent prayer God, **Gaud**! What solace hath thou. Since prayers were not answered, with total resentment and frustration knocks at the doors of this Court for justice. Cases like this are innumerable but the authorities who are charged with the duty of looking after the welfare of these students act insensitively and in total violation of norms but who is to be blamed? a blase public that has shrugged off this hideous mincing of youth in his prime, a seasoned killer like respondent institute or the University which is insensitive to this human issue. When a gentle lad is neatly chopped and packed in boxes to be thrown overboard piece meal, the University shrugs off and leaves the loved ones in the hands that held him close, cradled him and crooned lullaby to heal this raw wound. Who is the villain of this saga? Is it the college or the University? In my view both, but my hands are tied with precedents and I can only pretend that the tears are from cutting of onions and pray God, give these unfortunate lads peace and tell them justice hath not completely fled our shores and that demons shall surely pay for their deeds.

2. Cause for the agony is the disapproval of the admission by the University made by a private management on extraneous considerations and in blatant violation of the norms set down by the rules and the regulations by the State Government. Student had passed preuniversity examination securing less than 40% marks in aggregate in the year 1994. On an application made by him, respondent institute admitted him to B.E. degree course in its quota by collecting the necessary fees etc. Student was allowed to appear for first and second semester examinations of the academic year 1995-96 by the principal of the college who also happens to be the Chief Superintendent of the examinations for their center. The result of the examination is kept in dark. When the student was refused admission to the third semester of B.E. degree course and when his results of the earlier semester examinations are not made known to him, he was constrained to approach this Court for the necessary and suitable reliefs.

3. Respondent University in its brief note only says that the results of the examination of the petitioner is not announced only because his admission to the course by the college has not been approved by the University. They totally place reliance on the amended Rules of the Karnataka Selection of Candidates for Admission to

Engineering, Medical, Dental, Pharmacy and Nursing courses (Amendment) Rules 1994 to justify their action.

4. Learned counsel Sri B.G. Sridharan for petitioner pleads that the respondents having permitted the student to appear for first and second semester examinations of B.E. Degree Course was not justified in not announcing the results of the examination and further not permitting the student to appear for third semester course and the ensuing examination. Relying on the observations made by the Apex Court in the case of KRISHNAN VS. KURUKSHETHRA UNIVERSITY, (AIR 1976 SC 376), submits that once the petitioner was admitted and allowed to appear for first and second semester examination the respondent University was obliged to announce the results of the examination and refusal to permit the student to prosecute third semester in B.E. degree course is wholly arbitrary, illegal and opposed to constitutional provisions.

5. Learned counsel next submitted that the respondent institute was well aware of the fact that the petitioner had not secured 40% marks in their qualifying examination, yet he was permitted to prosecute his studies and therefore respondents action in cancelling the admission is hit by the principles of promissory estoppel. In support of

this contention, learned counsel strongly relies upon the certain observations made by Supreme Court in the case of SANATAN GANDA VS. BERHAMPUR UNIVERSITY(AIR 1990 SC 1075) and other decisions.

6. To keep away from these abrasions and legal tangles, most **conviniently** respondent institute doesn't even bother to file its return nor its counsel cares to appear at the time of hearing of this petition.

7. Sri N.K. Patil informs me that the University had made known its stand to the college on 11.06.1996 i.e. much before the college authorities had permitted the student to appear for the examination and further submits that the points canvassed by learned counsel for petitioner is no more a debatable issue in view of the authoritative pronouncement of this Court in the case of SRI JAGADESSHCHARI VS. BANGALORE UNIVERSITY (W.A. 721/1990 D.D. 16.07.1990).

8. Before I advert to the contentions raised by learned counsel for the parties let me notice what this Court had to say when a student had inherent lack of qualification and manifest ineligibility for admission to L.L.B. Course. This Court after taking into consideration the

observations made by the Supreme Court in Kurukshetra University's case was pleased to observe:

> 5. We have given our very careful consideration to the above argument. There is no such uniform rule, when merely a student has been admitted **though he lacks eligibility to be admitted,** he must be allowed to continue irrespective of the circumstances. In AIR 1986 Supreme Court 1448, as seen from the passage occurring at page 1455, that was a case where for the sake of capitation fee the principals of the colleges had granted admission to the applicants. AIR 1987 Supreme Court 2305 was a case wherein though the practice of admitting ineligible candidates was criticised, yet it was found that it was a bonafide interpretation of a regulation which made the Court exercise sympathy in favour of the student. AIR 1976 Supreme Court 376 does not held the appellant because, that merely lays down once a student had been admitted and allowed to take the examination, there is no power to withdraw from the examination. AIR 1990 Supreme Court 1075 was again a case which related to estoppel. That is not the position here. ILR 1990 Karnataka 522 merely stated that under Article 226 of the Constitution, it would be open to the Court to consider a case on equitable basis or on sympathetic consideration.
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> 6. In the case on hand what is important to be noted is the letter of the Registrar of the University dated 19.09.1986, which we have extracted above. There was a misapprehension as to whether

> the appellant would be entitled to the benefits extended to scheduled castes and scheduled tribe candidates on the ground that he was a displaced goldsmith. It was this which enabled him to gain admission and he merrily continued for one year and later on when on 17.12.1987 he was informed that he did not possess even the eligibility, he came forward with the writ petition. Fortunately for the appellant, he was able to obtain stay and under the cover of stay he had practically completed the course. Under these circumstances, we are unable to see how he could ever say that his case must be viewed sympathetically. In so far as the concerned regulations did not provide for any relaxation of minimum percentage in the qualifying examination to the members of displaced goldsmiths family, the claim of the appellant is misconceived. Where, therefore, he had been put on notice about ineligibility and under the cover of the stay order if he had completed his course, he cannot claim any sympathy on the score of the above decisions. As a matter of fact this Court has consistently taken the view that where there is inherent lack of qualification - a manifest ineligibility, it is not a case for the Court to interfere.

9. It is not in dispute that the petitioner had secured less than 40% marks in aggregate in his qualifying examination. To be precise he has secured 38.3% marks in IInd year preuniversity examination which is the qualifying examination for admission to B.E. Degree course.

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10. Section 14 of the Karnataka Educational Institutions Prohibition of Capitation Fee Act, 1984, authorises the State Government to amend the Karnataka Selection of candidates for Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses, Rules 1993. The State Government exercising its powers conferred on it by the aforesaid section has amended Rule 3 of the Rules by an amendment known as Amendment Rules 1994 which has been notified on 22nd June 1994. The proviso which has been substituted to the Rule 3 reads as under:

> Provided that the minimum marks for the purpose of qualification specified for free seats shall not be less than forty percent in case of candidates belonging to Scheduled castes/Scheduled tribes and Category-I specified in the relevant Government orders for the purpose of reservation.

11. A plain reading of the proviso to the Rule reproduced above **makes** it clear that no student can be admitted to the engineering course unless he has secured atleast 40% marks in qualifying examination for admission. Admittedly

petitioner has secured less than 40% marks in the qualifying examination and consequently the petitioner is ineligible for admission in Engineering course. In view of this statutory rule debarring the admission of a student to the professional course who had secured less than 40% marks in the qualifying examination, first respondent private management could not have admitted the student and the institute has no authority to relax the rules. The admission of the student to the professional course is contrary to proviso to Rule 3 of the Rules 1994. Now who has to be blamed for this sorry state of affairs. First I think the educational institution for indefensible act since it did not act fairly, though knowing fully well that a student who has secured less than 40% marks in the qualifying examination is ineligible for admission to professional courses. Nextly it is the University which closes its eyes inspite of blatant violation of norms set down by the rules and regulations by these educational institution. In the end the sufferer is the gullible student and his parents and this Court has to rest content with the academic pronouncement of the true legal position.

12. The contention with regard to the principles of promissory estoppel is concerned, in my view it has no substance whatsoever for the

reason that the principles of promissory estoppel cannot be applied against a statute. As noticed above, proviso to Rule 3 of the Rules is a statutory rule, according to said rule no student can be admitted to B.E. degree course unless he or she has obtained 40% marks in the qualifying examination for admission (SC/ST student). Since the obtaining of 40% marks in aggregate in the qualifying examination is a condition precedent for the eligibility for admission to the professional course, a mere permission granted by the college authorities to prosecute their studies cannot operate as estoppel, the same being contrary to the statutory rule. Even otherwise the admissions made by the college authorities is only provisional subject to the approval of the University authorities since the admission itself was contrary to proviso to Rule 3 of the Rules, the University is justified in disapproving the admission of the

13. Having regard to the overall facts and circumstances of the case, in my opinion no ground justifying the relief is made out, The petition is therefore dismissed. No order as to costs.

Sd/-
JUDGE